

## **REMARKS**

This is a full and timely response to the above-identified, Final Office Action. Entry of this amendment, reexamination and favorable reconsideration of the application in light of 37 C.F.R. 1.116 and the following remarks are requested.

Originally filed claims 1 through 23 remain pending in this application. Claims 1, 3, 12, 19 and 22 are the independent claims. Claims 5 and 12 to 18 are amended in accordance with suggested language by the Examiner in the Final Action page 9 and 10. No claims have been cancelled or added. No claims have been allowed. All of the pending claims, 1 through 23, were rejected with claims 10-18, and 20 being rejected under 35 U.S.C. 112, claims 1 through 23 being rejected under 35 U.S.C. 102 and claims 11 and 17 being rejected under 35 U.S.C. 103.

### **The Rejection of Claims 10 - 18, and 20 Under 35 U.S.C. 112**

Claims 10 and 12-18 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claims 12-18 state “media-borne.” The Applicant accepts the Examiner’s suggestion in the Final Action page 9 to replace “media-borne” with “computer-readable medium carrying software instructions for an” Appropriate changes have been made in the amended claims.

Claims 10 and 20 state “useable by laymen in the field of ergonomics” is deemed to be relative. The Examiner stated basically the Applicant is claiming “easy to use.”

The Applicant appreciates that the Examiner on page 10 of the Final Action has withdrawn this assertion. No changes have been made in the claims regarding this issue.

Claim 16 also contains language referring to laymen and the phrase “may be” that the Examiner rejected as being indefinite. The phrase referring to laymen as being relative like “easy to understand” is covered by the Examiner’s withdrawal of this assertion under claims 10 and 20 above. The Examiner accepted the Applicant suggestion that the phrase “may be” is replaced by “is specifically designed to be” on page 9 of the Final Action. On page 10 of the Final Action, the Examiner suggested that “may be used” be replaced by “can be used.” In order to be consistent, the Applicant has amended this phrase “may be” in two places (claims 5 and 16) to use the phrase “is specifically designed to be.” Appropriate changes have been made in the amended claims.

Claims 11 and 17 were rejected because the Examiner believes that the statement “wherein ergonomic programs conform to government regulations” is not correct where the government is not deemed to have regulations regarding software programs. These claims are similarly stated in Claims 11 and 17. The Examiner’s statement on this issue on page 9 and 10 of the Final Action is not completely clear to the Applicant. The Applicant believes that the original application (see for example Figure 2) defines ergonomic programs that conform to the key elements of proposed Federal ergonomic regulations and existing California ergonomic regulations (previously discussed in the Applicant’s response to the First Action). Therefore, the Applicant respectfully requests that the Examiner waive rejection to Claims 11 and 17 under 35 U.S.C. 112.

In light of the above, the Examiner's rejections under 35 U.S.C. 112 are no longer tenable. The Applicant requests that the rejection of these claims be withdrawn.

**The Rejection of Claims 1 through 23 Under 35 U.S.C. 102**

Claims 1-23 were rejected by the Examiner under U.S.C. 102(e) as being anticipated by Stern et al. U.S. Patent No. 6,592,223.

This application contains 5 independent claims (1, 3, 12, 19, and 22). These independent claims all recite the limitation of at least one ergonomics program. Independent claim 3 recites the limitation of a plurality of ergonomics programs.

In the original specification (page 3, line 15 to line 18), ergonomics programs are defined for this application as "For the purpose of describing the hereinafter described invention, **an ergonomics program** is generally one that complies with an OSHA standard and provides for the reduction of, and protection against, WMSDs by assessing and controlling a worksite environment, involving both employees and management." The application further defines (on page 3 line 19 to 21) the six elements of an OSHA standard as "management leadership, employee participation, WMSD management, job hazard analysis, job hazard reduction and control, and training." Further, the application teaches (page 3, line 23 to page 4, line 2) that "In the absence of an OSHA standard, the six elements would be generally adopted, modified or combined in an ergonomics program that would provide an informed and protective work-site environment." The multiple elements of an ergonomic program are clearly depicted in Figure 2 of the application.

The current application (page 2, line 2 to line 3) defines the need to consider a wide variety of job hazards such as tasks performed in an awkward manner and lifting and carrying loads in improper ways. In at least two places (page 5, line 2 to line 4 and page 14, line 9 to line 11), the current application provides for an ergonomic evaluation and suggested worksite modifications specific to each worksite. These various worksites are not restricted to visual ergonomic challenges and must allow for assessment of a wide range of job hazard analyses present in any job. For example, the detailed description in the application (page 18, line 15 to page 19, line 9) of measuring vertical eye height as compared to vertical screen height for a computer or data entry worker is a measure of neck tilt (to avoid neck strain) that is a critical component of an ergonomics program for such workers. This is not a measure of vision or visual acuity as in Stern.

Stern anticipates only one aspect of one component of an ergonomics program as defined in the specification of the current application. Stern never mentions an ergonomic program as included in independent claims 1, 3 12, 19 and 22 and defined in the specifications and Figure 2. The only mention in Stern of an even similar word is the phrase “ergonomic staff” (Figure 3 and page 5, line 41 of Stern). Stern is focused on visual aspects of a single type of work environment – the computer worksite. Stern only addresses a single element of an ergonomics program - job hazard reduction and control - and totally neglects the other elements of an ergonomics program. One of ordinary skill in the art would clearly recognize that Stern does not teach or anticipate a full ergonomics program provided in the current application. While the current application is specifically designed to be used by laymen, it must still satisfy the claimed delivery of an ergonomics program as would be known to one of ordinary skill in ergonomics. While an

ergonomics program may not include specifically the six elements of an OSHA standard (recited in the specification page 3, line 23 to page 4, line 2), it is very clear that an ergonomics program must have more than one element as in Stern. In specific regard to claim 3, Stern does not anticipate a plurality of ergonomic programs as would be required in a variety of worksites.

The dependent claims are deemed to be patentable for the same reasons advanced above as supported by the patentability of the independent claims. The dependent claims add further limitations. In specific reference to Claims 2, 5 and 16 defining the use of the provided system by non-expert laypersons, Stern specifically requires that all measured visual information be provided to experts such as the corporate ergonomic staff and/or the user's eye care professional (Stern page 5, lines 40-43). This perspective of Stern is diametrically opposed to the limitations specifying use by laymen in Claims 2, 5 and 16. Therefore Claims 2, 5 and 16 and are not anticipated by Stern.

In light of the above, the Examiner's rejections of all of these claims (1-23) under 35 U.S.C. 102 are not tenable. The Applicant requests that the rejection of all of these claims be withdrawn.

#### **The Rejection of Claims 11 and 17 Under 35 U.S.C. 103**

The Examiner states that Claims 11 and 17, as best taught and understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern.

Claims 11 and 17 recite that the defined ergonomics system (including an ergonomic program as in the referenced independent claims) conforms to government regulations. Further the application teaches (page 3, line 23 to page 4, line 2) that "In the absence of an OSHA standard, the six elements would be generally adopted, modified or

combined in an ergonomics program that would provide an informed and protective work-site environment.” Federal ergonomic standards were not placed into practice. While not stated in the specifications (but previously discussed in the Applicant’s response to the First Action), states such as California have existing ergonomic regulations that do require programs as generally defined in this application.

It is clear from the arguments above that Stern is not attempting to provide an ergonomics program of any type (Stern only has one element of an ergonomics program); therefore, it would be highly unlikely for Stern, or someone referring to Stern’s teachings, to assume the possibility that his system would satisfy government regulations. In fact Stern would be totally inadequate for most of the elements of such a program.

In light of the above, the Examiner’s rejections of claims 11 and 17 under 35 U.S.C. 103 are not tenable. The Applicant requests that the rejection of both of these claims be withdrawn.

### **Conclusion**

Based upon the foregoing amendments and remarks, Applicant submits that the claims now present in the application are both definite as well as allowable over the cited references. The dependent claims are also allowable for at least the reasons given above with respect to the independent claims and because they recite features which are patentable in their own right. Individual consideration of the dependent claims is requested

Because all claims herein are believed to be allowable, the early passage to issue the instant application is respectfully solicited.

Entry of this amendment is deemed to be appropriate because it is believed to place the application in condition for allowance, and further, in better condition for appeal. No further issues are raised, nor is any further search required, by the entry of this amendment

No additional fees are required.

In the event that the Examiner has any comments or suggestions which could place this application in even better form, the Examiner is invited to telephone the undersigned Applicant at the below-listed numbers.

Respectfully submitted,

  
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